TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 231, 182.

RICHARD F. CAFFREY, AS COUNTY CLERK OF OKLAHOMA COUNTY, OKLAHOMA TERRITORY, PLAINTIFF IN ERROR AND APPELLANT,

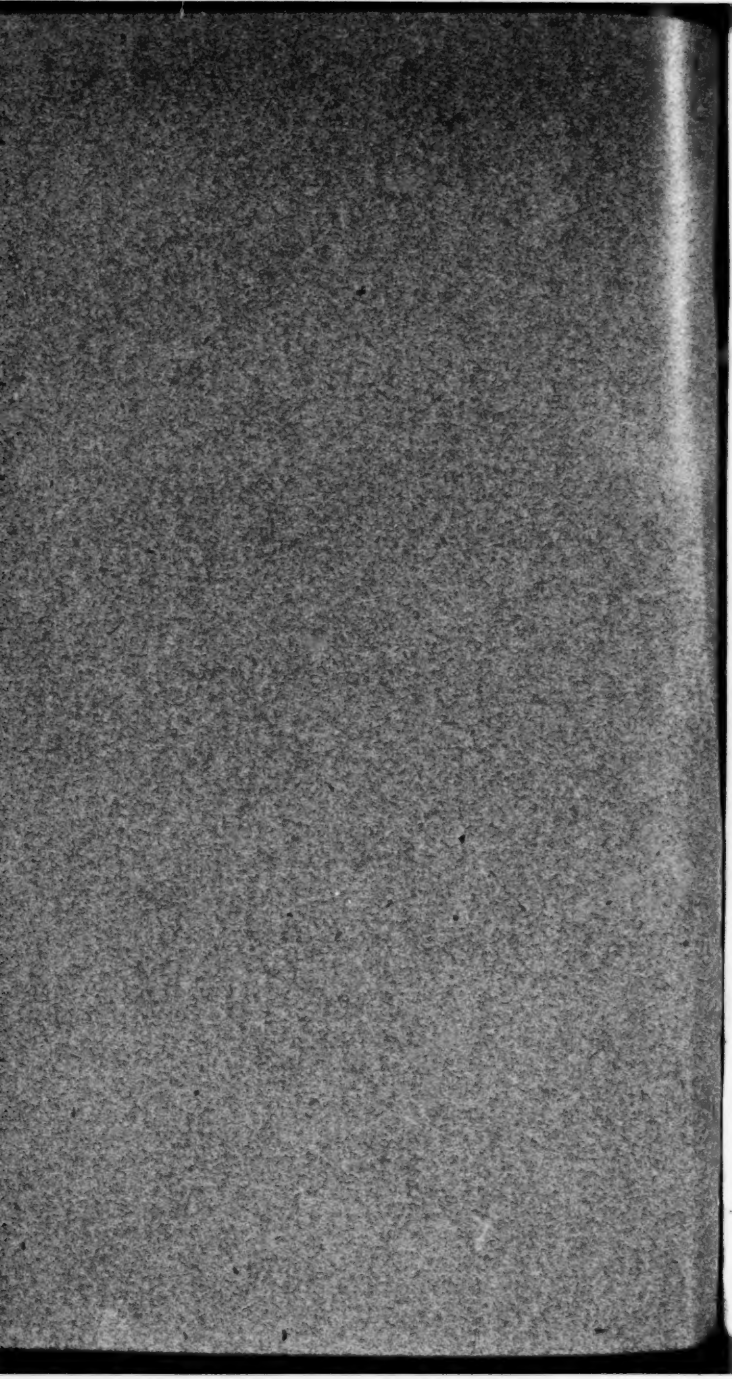
vs.

THE TERRITORY OF OKLAHOMA ON THE RELATION OF HARPER S. CUNNINGHAM, ATTORNEY GENERAL.

IN ERROR TO AND ON APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF OKLAHOMA.

FILED JANUARY 4, 1899.

(17,246.)



(17,246.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 661.

RICHARD F. CAFFREY, AS COUNTY CLERK OF OKLAHOMA COUNTY, OKLAHOMA TERRITORY, PLAINTIFF IN ERROR AND APPELLANT,

vs.

THE TERRITORY OF OKLAHOMA ON THE RELATION OF HARPER S. CUNNINGHAM, ATTORNEY GENERAL.

IN ERROR TO AND ON APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF OKLAHOMA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 15, 1899.

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a UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the Territory of Oklahoma, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the Territory of Oklahoma, before you or some of you, between The Territory of Oklahoma on the relation of Harper S. Cunningham, attorney general, plaintiff, and Richard F. Caffrey, as county clerk of Oklahoma county, Oklahoma Territory, defendant, a manifest error hath happened, to the great damage of the said defendant, Richard F. Caffrey, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the 3rd day of January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal Supreme Court, Territory of Oklahoma.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 5th day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

BENJ. F. HEGLER,
Clerk of the Supreme Court of Oklahoma Territory.

Allowed by—
JNO. H. BURFORD,
Chief Justice Supreme Court, Oklahoma.

b Be it remembered that a full, true, and correct copy of the above and foregoing writ of error was deposited in the office of the undersigned, Benjamin F. Hegler, clerk of the supreme court of the Territory of Oklahoma, on the 5th day of December, A. D. 1898, and in pursuance of the commands contained in said foregoing writ of error I herewith return into the Supreme Court of the United States a full, true, and complete transcript of the record in the case entitled "Territory of Oklahoma on the relation of Harper S. Cunningham, as attorney general, plaintiff, against Richard F. Caffrey, as county clerk of Oklahoma county, Oklahoma Territory, defendant," the same being the identical case mentioned and described in said writ of error, and the transcript herewith returned is as follows, to wit:

c UNITED STATES OF AMERICA, } ss:
Territory of Oklahoma, }

I, Benjamin F. Hegler, clerk of the supreme court of the Territory of Oklahoma, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from 1 to 76, both inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of The Territory of Oklahoma on the relation of Harper S. Cunningham, as attorney general, plaintiff, against Richard F. Caffrey, as county clerk of Oklahoma county, Oklahoma Territory, defendant, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of said court to be affixed, at my office, in the city of Guthrie, Logan county, said Territory, on this the 29th day of December, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States of America the one hundred and twenty-third.

Seal Supreme Court, Territory of Oklahoma.

BENJ. F. HEGLER,
Clerk of the Supreme Court.

d Be it further remembered that on the 13th day of August, A. D. 1898, the plaintiff, through its attorney general, filed in the office of the clerk of the supreme court of Oklahoma its motion for an alternative writ of mandamus against the defendant in said above-entitled cause, with Exhibits A and B thereto attached as parts thereof; which said motion and exhibits, together with the endorsements thereon, are in words and figures as follows, to wit:

1 EXHIBIT "B."

TERRITORY OF OKLAHOMA:

OFFICE OF TERRITORIAL AUDITOR,
GUTHRIE, O. T., *June* 27, 1898.

To the county clerk of Oklahoma county, Oklahoma Territory:

I hereby certify that at a meeting of the territorial board of equalization held at Guthrie for the year 1898 the following changes were made in assessed valuation, and the following amount of taxes, for the purposes named, was apportioned to the county of Oklahoma to be assessed upon the taxable property of said county for the year 1898, to wit:

Total valuation as reported by county clerk	$3,080,695
24 per cent. by territorial board of equalization	739,366
Total valuation as fixed by territorial board of equalization	$3,820,061
Railroad property assessed by board of railroad assessors.	336,693
Grand total valuation of county	$4,156,754

Apportionment of Taxes.

For general revenue, 3 mills on the dollar	$12,470 26
For current university fund, .5 mills on the dollar	2,078 37
For current normal school fund, .5 mills on the dollar.	2,078 37
For bond interest fund, .2 mills on the dollar	831 35
For board of education fund, — mills on the dollar	
For the education of the deaf and dumb, .05 mills on the dollar	207 83
For the education of the blind, .05 mills on the dollar	207 83
2 Total, 4.3	$17,874 01

In testimony whereof I have hereunto set my hand and affixed the official seal of my office this 27 day of June, 1898.

S. N. HOPKINS,

[SEAL.] *Auditor of Territory and Secretary Territorial Board of Equalization.*

I, S. N. Hopkins, auditor, hereby certify that the foregoing is a true copy of the original.

Witness my hand and seal this 13 day of August, 1898, at Guthrie, O. T.

Endorsed: 744. Ter. of Oklahoma *ex rel.* Harper S. Cunningham *vs.* Richard F. Caffrey, as Co. clerk of Ok. Ter. Copy of apportionment of taxes. Filed Aug. 13, '98. Benj. F. Hegler, clerk sup. ct., by M. E. Ketsch, deputy.

3 In the Supreme Court of the Territory of Oklahoma.

TERRITORY OF OKLAHOMA *ex Rel.* HARPER S. Cunningham, as Attorney General, Plaintiff, *vs.* RICHARD F. CAFFREY, as County Clerk of Oklahoma County, Oklahoma Territory, Defendant.	No. 744. Motion.

Comes now the above-named plaintiff, by Harper S. Cunningham, attorney general of the Territory of Oklahoma, by direction of the governor of said Territory, and moves the Hon. B. F. Burwell, associate justice of the supreme court of the Territory of Oklahoma, for an alternative writ of mandamus in the above-entitled cause for the reasons stated in the affidavit of said Harper S. Cunningham hereto attached, made a part hereof and marked Exhibit "A."

A certified copy of notice hereto attached, marked Exhibit " B," is also made a part hereof.

(Signed) HARPER S. CUNNINGHAM,

Attorney General, Oklahoma Territory.

4 EXHIBIT "A."

In the Supreme Court of the Territory of Oklahoma.

TERRITORY OF OKLAHOMA *ex Rel.* HARPER S. CUNNINGham, as Attorney General, Plaintiff,
vs.
RICHARD F. CAFFREY, as County Clerk of Oklahoma County, Oklahoma Territory, Defendant.
} Affidavit.

TERRITORY OF OKLAHOMA, *County of Logan,* } *ss:*

Harper S. Cunningham, being duly sworn, upon his oath states: That he is attorney general of the Territory of Oklahoma, and that as such attorney general, by direction of the gove-nor of said Territory, brought the above-entitled action.

Affiant is informed and believes and therefore states as a fact that Richard F. Caffrey, the above-named defendant, is the duly elected, qualified, and acting county clerk of Oklahoma county, Oklahoma Territory; that heretofore and on, to wit, the 27th day of June, 1898, the territorial board of equalization, at a regular meeting of said board, at the city of Guthrie, Logan county, Oklahoma Territory, did then and there duly find and order that a percentage of twenty-four per centum of the assessed valuation of the property in said county of Oklahoma as returned for the year of 1898 by the county clerk of said county to said board of equalization be added to said assessed valuation, and that thereafter, on said date, the said Richard F. Caffrey was duly notified in writing of the said percentage so found and ordered to be added to the valuation of said
5 property in Oklahoma county; that it is the duty of the said county clerk of said Oklahoma county to add to the total value of the property assessed to each party in said county the percentage so found and ordered.

Affiant further states that the said county clerk, Richard F. Caffrey, has failed and refused and now fails and refuses to so add to the total value of the property assessed as aforesaid the said percentage so found and ordered, and to extend said valuation so increased by said percentage upon the tax-rolls of said Oklahoma county; that plaintiff in this action has no plain and adequate remedy in the ordinary course of the law in the premises.

(Signed) HARPER S. CUNNINGHAM.

Subscribed and sworn to before me this the 12th day of August, 1898.

[SEAL.] (Signed) ALBINA A. STEVENS,
Notary Public.

My commission expires April 12, 1901.

Endorsed: 744. Territory of Oklahoma *ex rel.* Harper S. Cunningham, att'y gen'l Oklahoma, *vs.* Richard F. Caffrey, Co. clerk of

Ok. Co. Affidavit in support of motion for alternative writ of mandamus. Filed Aug. 13, '98. Benj. F. Hegler, clerk sup. ct., by M. E. Ketsch, deputy.

6 Be it further remembered that theretofore and on, to wit, the 12th day of August, A. D. 1898, Hon. B. F. Burwell, as associate justice of the supreme court of the Territory of Oklahoma, issued an alternative writ of mandamus in said cause; which said writ, together with the endorsements thereon, is in words and figures as follows, to wit:

7 In the Supreme Court of the Territory of Oklahoma.

TERRITORY OF OKLAHOMA *ex Rel.* HARPER S. Cunningham, as Attorney General, Plaintiff, *vs.* RICHARD F. CAFFREY, as County Clerk of Oklahoma County, Oklahoma Territory, Defendant.	No. 744. Alternative Writ of Mandamus.

Territory of Oklahoma to Richard F. Caffrey, county clerk of the county of Oklahoma, Territory of Oklahoma, Greeting:

Whereas it has been duly suggested to me, the undersigned, one of the associate justices of the supreme court of the Territory of Oklahoma, that you, Richard F. Caffrey, are the duly elected, qualified, and acting county clerk of the county of Oklahoma, Territory of Oklahoma, and that heretofore and on, to wit, the 27th day of June, 1898, at a regular meeting thereof, the territorial board of equalization of said Territory duly found and ordered that a percentage, to wit, twenty-four per centum of the assessed valuation of the property in said county as returned for the year of 1898 by the county clerk of said county to said board of equalization be added to said assessed valuation, and that you as such county clerk have been duly notified in writing of the said percentage so ordered to be added to the valuation of property in said county of Oklahoma, and that it is your duty as such county clerk to add to the total value of the property assessed to each person in said county the said percentage so ordered and extend same upon the tax-rolls of said county, and that you as such county clerk have failed and refused and now fail and refuse to so add to the total value of the property assessed to each person the said percentage so ordered and extend same on the tax-rolls of said county, and that there is no plain and
8 adequate remedy in the ordinary course of the law in the premises:

Now, therefore, I, being willing that full and speedy justice should be done in the premises, do command you that immediately upon the receipt of this writ you add to the total value of the property assessed to each person in said Oklahoma county the said per centum so ordered and extend same upon the tax-rolls of said county, or that you appear before the supreme court of the Territory of Okla-

homa, at the court-house, in the city of Guthrie, Logan county, in said Territory, on the 1st day of September, 1898, at 10 o'clock a. m. of said last-named day, to show cause why you have not done so, and return you then and there this writ with your certificate of having done as you are commanded. Should you fail to return this writ as commanded you will be proceeded against for contempt.

Witness my hand this twelfth day of August, 1898, at Oklahoma city, Oklahoma county, Oklahoma Territory.

B. F. BURWELL,
Associate Justice of the Supreme Court of Oklahoma Territory.

Attest: BENJ. F. HEGLER,
Clerk Supreme Court,
[SEAL.] By M. E. KETSCH, *Deputy.*

Endorsed: No. 744. In the supreme court of the Territory of Oklahoma. Territory of Oklahoma *ex rel.* Harper S. Cunningham, as attorney general, plaintiff, *vs.* Richard F. Caffrey, as county clerk of Oklahoma county, O. T., defendant. Alternative writ of mandamus. 8, 12, '98. Writ allowed. B. F. Burwell, associate justice of the supreme court of the Territory of Oklahoma.

9 Be it further remembered that thereafter and on the first day of September, A. D. 1898, the defendant filed in said cause his answer and return to the alternative writ of mandamus, which, together with Exhibits A, B, C, and D thereto attached and made a part thereof and the endorsements thereon, is in the words and figures following, to wit:

10 In the Supreme Court of the Territory of Oklahoma.

TERRITORY OF OKLAHOMA *ex Rel.* HARPER S. Cunningham, as Attorney General, Plaintiff, *vs.* RICHARD F. CAFFREY, as County Clerk of Oklahoma County, Oklahoma Territory, Defendant.	Answer and Return to Alternative Writ of Mandamus.

Now comes the said defendant, Richard F. Caffrey, and, for answer and return to the alternative writ of mandamus issued herein against him, says:

First. That he admits that he is the duly elected, qualified, and acting county clerk of the county of Oklahoma, Territory of Oklahoma, and that heretofore and on, to wit, the 27th day of June, 1898, the territorial board of equalization of said Territory, at an adjourned meeting thereof, made an order finding, among other things, that the assessed valuation of said Oklahoma county should be increased 24 per centum of the assessed valuation of the property in said county, as shown by the assessor's returns within and for said county, after having been equalized by the county board of

equalization thereof, and that said defendant has been duly notified in writing of said order, and, further, that he (defendant) has failed and refused to add said percentage to the valuations of the taxpayers of his said county or to extend same upon the tax-roll.

Second. For a further answer and return to said writ defendant alleges that the said pretended order of the territorial board of equalization made on the said 27th day of June, 1898, is illegal and void for the following reasons: 1st, that said board had no jurisdiction or legal authority to make said order; 2d, that said order was not made by said board for the purpose of equalizing the assessed valuation of the various counties of this Territory, but was, as shown upon its face, made for other and illegal purposes,
11 among which was the increasing of the aggregate valuation of all property of the Territory in the sum of $8,809,505.00; that the total valuation of all the taxable property of said Territory, outside of railroad property, as shown by the returns of the various county clerks to said territorial board of equalization, is the sum of $29,404,279.00, and that said board of equalization by its said pretended order of June 27th, 1898, and of June 29th, 1898, increased the total aggregate value of said property to the sum of $38,213,784.00; that said pretended orders of said board were made arbitrarily and without any competent evidence to justify same and with no further or other evidence than the said assessment-rolls certified thereto by the various county clerks of the different counties of said Territory; that by said pretended order of June 27th, 1898, the assessed valuation of the property, both real and personal, of Pottawatomie county, as certified to said board by the county clerk thereof, appears to have been taken as a basis for the pretended equalization of the assessed valuations of the other counties and for its action in increasing the aggregate assessed valuation of the said Oklahoma county 24 per centum of its original valuation, which amounts to an increase in the sum of $739,366.80; that the valuation placed upon all the taxable property of the said county of Oklahoma, as shown by the assessment-roll certified by this defendant to said territorial board of equalization, was and is the fair and true cash value of all said property, and that said valuation was equally as high (and in some instances higher) as that of the same classes of property of the said Pottawatomie county; that a large portion of the property so assessed and valued for taxation in said county of Oklahoma and whose valuation was so increased to the extent of 24 per centum thereof by the territorial board of equalization consists of money, as shown by said assessment-roll certified to the territorial board of equalization by this defendant; all of which facts alleged in this second count of the defendant's answer and return appear more fully from a copy of the pro-
12 ceedings of said territorial board of equalization from June 20th to 29th, 1898, inclusive, and copies of the assessment-rolls of said Pottawatomie and Oklakoma counties, certified by the county clerks thereof to said board; all of which said copies are hereto attached, made parts hereof, and marked Exhibits "A," "B," and "C."

Third. The defendant, further answering, says that he was prevented from adding the said 24 per centum of increase so ordered by said territorial board of equalization to the original valuation of the taxable property of each tax-payer of his said county by an order of the board of county commissioners thereof, which said order is hereto attached, made part hereof, and marked Exhibit "D;" that said order of said board of county commissioners was made because of the fact that all the taxable property of said Oklahoma county had already been valued for taxation at its actual and true cash value and at a higher valuation than that placed upon similar property in Pottawatomie county prior to the pretended order of said territorial board of equalization increasing same 24 per centum, and defendant demands that he be permitted to offer proof and to have a trial by jury upon this issue of fact; that the pretended order of the said territorial board of equalization in assuming to increase the valuation of all the taxable property of Oklahoma county and the other counties of the Territory other than the railroad property thereof was made without any notice to any of the county officers or tax-payers of said counties and without affording any opportunity to any one in behalf of any of said counties to appear before said board and have a hearing upon the question of whether or not the orders of said board increasing the valuations of the property of said Oklahoma and the other counties of the Territory for taxation *was* in any respect fair, just, or equitable.

Wherefore defendant asks that he be granted a hearing in behalf of the tax-payers of his county in order that he may estab-
13 lish by competent proof the allegations of fact hereinbefore set out, and that upon a final hearing he have judgment against the relator for his costs in this behalf laid out and expended.

(Signed) RICHARD F. CAFFREY, *Defendant.*
(Signed) J. R. KEATON,
Attorney for Defendant.

14 "EXHIBIT A."

GUTHRIE, O. T., *June 20th*, 1898.

Pursuant to the provisions of chapter forty-three of the Session Laws of Oklahoma, 1895, the territorial board of equalization for the Territory of Oklahoma met in the auditor's office, in the city of Guthrie, Monday, June 20, 1898.

The following members were present: Ter. Secretary W. M. Jenkins and Auditor S. N. Hopkins, secretary.

The abstracts of assessments not having been received from the counties, the board adjourned, to meet Saturday, June 25th, at 4.00 p. m.

S. N. HOPKINS,
Ter. Auditor & Sec'ty of Board of Equalization.

GUTHRIE, O. T., *June* 25, 1898.

The territorial board of equalization convened at the auditor's office pursuant to adjournment.

There were present Gov. C. M. Barnes, Ter. Sec't'y W. M. Jenkins, and Auditor S. N. Hopkins, sec't'y of b'd.

The abstracts of assessments not yet having been received from all the counties, the board adjourned, to meet at the auditor's office on Monday, June 27th, 1898, at 10.00 a. m.

S. N. HOPKINS,
Ter. Auditor and Sec't'y of Ter. Board of Equalization.

GUTHRIE, O. T., *June* 27, 1898.

Board met pursuant to adjournment, there being present Governor C. M. Barnes, president; Auditor S. N. Hopkins, secretary of the board, and Attorney General Harper S. Cunningham, Ter. Sec't'y W. M. Jenkins being absent.

All abstracts of assessments having been received by the secretary of the board, the board at once entered upon the work of making a levy. On motion, it was ordered that the rate of general territorial tax for the current year 1898 should be three mills on the dollar on the valuations to be fixed by the board at this meeting; that the tax levy for the support of the normal schools be one-half mill on the dollar; that the levy for the support of the ter. university be one-half mill on the dollar; that the levy for the interest on territorial bonds be one-fifth of a mill on the dollar; that the levy for the education of the deaf and dumb be one-twentieth of a mill on the dollar.

From the computations made by the secretary of the board it was found necessary to make the following changes in the county returns reported to the board, and on motion such changes were ordered to be made, to wit:

Name of county.	Per centum increase.	Per centum decrease.
Beaver	84%	
Blaine	50 "	
Canadian	14 "	
Cleveland	22 "	
Custer	37 "	
D	66 "	
Day	12 "	
Garfield	57 "	
Grant	22 "	
Greer		3%
Kay	42 "	
Kingfisher	58 "	
Lincoln	37 "	
Noble	30 "	
Oklahoma	24 "	
Pawnee	33 "	
Payne	20 "	
Pottawatomie	0 "	
Roger Mills	3 "	
Washita	26 "	
Woods	86 "	
Woodward	29 "	

The abstracts not having been returned for Logan county, the board adjourned, to meet at the auditor's office on receipt of Logan county's returns.

S. N. HOPKINS,
Ter. Auditor & Sec'ty Ter. Board of Equalization.

16 GUTHRIE, O. T., *June* 29, 1898.

The board of equalization met, pursuant to adjournment, at 2.00 p. m.

Present: Gov. C. M. Barnes, president; S. N. Hopkins, auditor and secretary of said board.

On motion, the secretary was directed to make the necessary changes in Logan county's abstracts of return by increasing same 19 per centum, this being on the same basis agreed upon for the other counties of the Territory.

On motion, the board adjourned.

S. N. HOPKINS,
Ter. Auditor & Sec'ty Ter. Board of Equalization.

TERRITORY OF OKLAHOMA, } ss:
County of Logan, }

I, S. N. Hopkins, superintendent of public instruction and *ex officio*

auditor, do hereby certify that the foregoing is a true and correct copy of the proceedings of the territorial board of equalization held on the dates herein given.

Witness my hand this 20th day of July, 1898.

S. N. HOPKINS,
Supt. Public Instruction and ex Officio Auditor.

17 "EXHIBIT B."

TERRITORY OF OKLAHOMA, }
Pottawatomie County. }

I hereby certify that the following is a true and correct statement of the property assessed for taxation in the county of Pottawatomie for the year 1898, as fixed by the county board of equalization:

Personal property.	Number.	Average value.	Assessed value.
1. Horses	10,508	14.87	156,253.96
2. Mules and asses	3,403	25.59	87,082.77
3. Cattle, six months' old and over	14,083	14.11	197,911.13
4. Sheep and goats over three months' old	145	2.00	290.00
5. Swine over three months' old	11,596	1.75	20,293.00
6. Farming implements			17,552.00
7. Wagons	3,072	11.45	35,174.40
8. Pleasure carriages of every description	635	19.80	12,573.00
9. Gold watches	191	9.00	1,719.00
10. Silver and other kinds of watches	509	3.86	1,964.74
11. Plate and jewelry			210.00
12. Piano-fortes	49		3,315.00
13. Other musical instruments			7,332.00
14. Household furniture			45,281.00
15. Interest on bonds of the United States			
16. Territorial and other bonds			100.00
17. Stocks in any company or corporation, current rate			20.00
18. Moneys			16,568.00
19. Credits, actual value			802.00
Bicycles			153.00
20. Average value of merchants' stock for preceding year			133,664.00
21. Average value of merchants' moneys and credits for preceding year			12,065.00
22. Average value of manufacturers' stocks for preceding year			8,717.00
23. Average value of manufacturers' moneys and credits for preceding year			
24. Shares in any vessel or boat			
25. Mortgages and all other securities			4,907.00
26. Promissory notes and accounts			14,137.00
27. Tax-sale certificates			59.00
28. Judgments			
29. Shares in national banks			58,430.00
30. Improvements on unentered lands or lots not deeded			75,748.00
Grain on hand			1,698.00
31. Aggregate value of all other property			38,688.00
Total amount of taxable property			952,708.00

18 *Telegraph and Telephone Property.*

Wires, No. wires ——; miles, No. miles ——; value, value ——; poles, No. ——; value ——; value of instruments ——; value as listed by county ——; value as listed by assessor ——. Telephone total ——.

Assessed as Personal Property.

Real estate—lands.	No. of acres.	Average val. per acre.	Value as listed by assessor.
Improved lands			
Unimproved lands			
Total assessed value of lands	52,187	3.00	156,561.00

Real estate—town and city lots.	Number of lots.	Average val. per lot.	Value as listed by assessor.
Improved town and city lots			
Unimproved town and city lots			
Total assessed value of town and city lots	10,435	31.60	329,779.00

Total value of all taxable property assessed in county, 1,439,048.00.
Total number of polls in county, 3,834.

In testimony whereof I hereunto subscribe my name and affix the seal of my office this 20 day of June, A. D. 1898.

[SEAL.] GEO. M. SOUTHGATE,
County Clerk.

19 Endorsed.

TERRITORY OF OKLAHOMA, } ss:
Pottawatomie County, }

I, Geo. M. Southgate, hereby certify that the within is a true and correct copy of the statement of the assessed valuations of all property assessed in Pottawatomie county, Oklahoma Territory, said statement having been sent to the territorial auditor.

GEO. M. SOUTHGATE, *Co. Clerk.*

Subscribed and sworn to before me this 8th day of Aug., 1898.

[SEAL.] J. D. F. JENNINGS,
Probate Judge.

Pottawatomie County—Statement of Assessment, 1898.

Valuation fixed by Co. board, $1,439,048.00.
Increase by territorial board, — per cent.
Decrease by territorial board, — per cent.
Final valuation, $——.
Filed this — day of ——, A. D. 189–.

—— ——, *Auditor.*

20 EXHIBIT "C."

TERRITORY OF OKLAHOMA, }
Oklahoma County. }

I hereby certify that the following is a true and correct statement of the property assessed for taxation in the county of Oklahoma for the year 1898, as fixed by the county board of equalization :

Personal property.	Number.	Average value.	Assessed value.	Total value of taxable prop.
1. Horses	8,609	$14.50	$124,839.00	
2. Mules and asses	2,285	17.73	40,567.00	
3. Cattle, six months' old and over	9,718	10.22	99,222.00	
4. Sheep and goats over three months' old			140.00	
5. Swine over three months' old	14,060	1.61	22,626.00	
6. Farming implements			27,170.00	
7. Wagons 8. Pleasure carriages of every description	2,880	12.19	34,826.00	
9. Gold watches	not given		3,729.00	
10. Silver and other kinds of watches.				
11. Plate and jewelry			219.00	
12. Piano-fortes 13. Other musical instruments	not given		13,764.00	
14. Household furniture			63,041.00	
15. Interest on bonds of the United States				
Bar fixtures			2,460.00	
16. Territorial and other bonds				
17. Stocks in any company or corporation, current rate				
18. Moneys 19. Credits		31,175.00		
20. Average value of merchants' stock for preceding year.			263,991.00	
21. Average value of merchants' moneys and credits for preceding year.				
22. Average value of manufacturers' stocks for preceding year.				
23. Average value of manufacturers' moneys and credits for preceding year				
24. Shares in any vessel or boat				
21 25. Mortgages and all other securities			71,044.00	
26. Promissory notes and accounts			14,262.00	
27. Tax-sale certificates			311.00	
28. Judgments			175.00	
29. Shares in national banks			36,000.00	
30. Improvements on unentered lands or lots not deeded.			50,913.00	
31. Aggregate value of all other property			78,046.00	
Total amount of taxable property			978,520.00	978,520.00

Telegraph and Telephone Property.

Telegraph property: Wires, No. wires ——; miles, No. miles ——, and value, value ——; poles, No. ——: value ——; value of instruments ——; value as listed by assessor ——. Telephone wires: No. wires ——; miles, No. miles ——, and, value, value ——; poles, No. ——; value ——; value of instruments ——; value as listed by county ——; value as listed by assessor ——; total ——.

Real estate—lands.	Number of acres.	Average val. per acre.	Value as listed by assessor.
Improved lands	277,100	3.71	1,030,361
Unimproved			
Total assessed value of lands			1,030,361

Real estate—town and city lots.	Number of lots.	Average val. per lot.	Value as listed by assessor.
Improvement on lots			519,381.00
Town and city lots	7,125	77.53	552,433.00
Total assessed value of town and city lots			1,071,814.00

Total value of all taxable property assessed in county	$3,080,695.00
Total number of polls in county	
Total value Okla. R. R.	336,692.00
	3,417,387.00

In testimony whereof I hereunto subscribe my name and affix the seal of my office this 18th day of June, A. D. 1898.

[SEAL.] R. F. CAFFREY.

Endorsed.

TERRITORY OF OKLAHOMA, } ss:
Oklahoma County, }

I, R. F. Caffrey, hereby certify that the within is a true and correct copy of the statement of the assessed valuations of all property assessed in Oklahoma county, Oklahoma Territory, said
22 statement having been sent to the territorial auditor.

R. F. CAFFREY,
County Clerk.

Oklahoma County—Statement of Assessment, 1898.

Valuation fixed by county board, $——; increase by territorial board, — per cent.; decrease by territorial board, — per cent; final valuation, $——.

Filed this — day of ——, A. D. 189–.

—— ——, *Auditor.*

23 EXHIBIT "D."

To R. F. Caffrey, county clerk, Oklahoma county, Territory of Oklahoma:

You are hereby instructed not to extend the raise on the valuation of the property of this county made by the territorial equalization board upon your books—

Said territorial raise of 24 % being in the judgment of the commissioners unwarranted, unjust, and without law. You will therefore carry out the different levies on the valuation as equalized by the county board, for the reason that the property of Oklahoma county is assessed at a fair cash value, according to the laws of Congress, by the organic act.

By order of the county commissioners:

[SEAL.] R. KLEINER,
Chairman Board of Co. Com.

TERRITORY OF OKLAHOMA, } ss:
Oklahoma County, }

I, the undersigned, county clerk within and for the above-named county and Territory, hereby certify that the within and foregoing is a correct copy of the original instrument now on record in my office, as appears in Book 2, Com'rs' Proceedings, page 68.

[SEAL.] Witness my hand and official seal this 31st day of August, 1898.

R. F. CAFFREY,
County Clerk.

Endorsed: 744. Territory —— *ex rel.* Cunningham, att'y general, *vs.* Richard F. Caffrey, county clerk, Oklahoma county. Writ of mandamus and return. Filed Sept. 1, '98. Benj. F. Hegler, clerk sup. —. Clerk ent.

24 Be it further remembered that thereafter and on the said first day of September, A. D. 1898, the said plaintiff, through its said attorney general, filed in said cause a motion to quash (or demurrer to) defendant's return to the said alternative writ of mandamus; which said motion to quash (or demurrer), together with the endorsements thereon, is in the words and figures following, to wit:

25 In the Supreme Court of the Territory of Oklahoma.

TERRITORY OF OKLAHOMA *ex Rel.* HARPER S. CUNNINGHAM, as Attorney General of the Territory of Oklahoma, Plaintiff, *vs.* RICHARD F. CAFFREY, as County Clerk of Oklahoma County, Oklahoma Territory, Defendant.	# 744.	Motion to Quash Return.

Now comes the above-named plaintiff, by Harper S. Cunningham, attorney general of the Territory of Oklahoma, and moves the court to quash the return and answer to the alternative writ in the above-entitled action, for the reason that said return and answer does not state facts sufficient to constitute a defense in said action.

Wherefore plaintiff asks judgment that a peremptory writ issue, and for costs of this action.

(Signed) HARPER S. CUNNINGHAM,
Attorney for Plaintiff, Attorney General.

Endorsed: No. 744. In the supreme court of Oklahoma Territory. Territory of Oklahoma *ex rel.* Harper S. Cunningham, as attorney general of the Territory of Oklahoma, plaintiff, *vs.* Richard F. Caffrey, as county clerk of Oklahoma Co., O. T., defendant. Demurrer. Motion to quash return. Filed Sept. 1, '98. Benj. F. Hegler, clerk sup. ct. Harper S. Cunningham, att'y for plaintiff. Ent.

26 Be it further remembered that thereafter and on, to wit, the 3rd day of September, A. D. 1898, the said supreme court of the Territory of Oklahoma made, passed, and rendered the rulings, orders, and judgments shown by the journal entry, subsequently signed by the chief justice as of said date and filed and recorded; which said journal entry is in the words and figures following, to wit:

27 In the Supreme Court of the Territory of Oklahoma.

TERRITORY OF OKLAHOMA *ex Rel.* HARPER S. CUNNINGHAM, as Attorney General, Plaintiff, *vs.* RICHARD F. CAFFREY, as County Clerk of Oklahoma County, Oklahoma Territory, Defendant.	No. 744.

Now, on this 3rd day of September, 1898, came the above-named parties, plaintiff and defendants, by their respective counsel; and this cause comes on to be heard before the court upon the alternative writ, the return of the defendants to the alternative writ, and the demurrer to said return; and the court, being fully advised in the premises and having duly considered said cause, sustains said demurrer; to which ruling the defendant excepts, and said cause is

now submitted to the court upon the pleadings and demurrer, and the court finds that the matters and facts stated and set forth in the alternative writ are true, and that the motion filed by the defendants to quash said alternative writ ought not, under the facts and the law, to be sustained.

It is therefore considered and ordered that said demurrer be, and the same is, sustained, and a peremptory writ of mandamus is hereby ordered to issue, as prayed for in plaintiff's original application; and it is further ordered that the plaintiff recover of the defendant his costs herein, taxed at six and $\frac{40}{100}$ dollars.

All of which is finally considered and ordered this 3rd day of September, 1898.

JNO. H. BURFORD,
Chief Justice Supreme Court, Oklahoma Territory.

28 Be it further remembered that thereafter and on the 21st day of September, A. D. 1898, the said foregoing journal entry was prepared, filed, and recorded, and a peremptory writ of mandamus issued in behalf of said plaintiff and against this defendant; and which said writ, together with the endorsements thereon, is in the words and figures following, to wit:

29 In the Supreme Court of the Territory of Oklahoma.

TERRITORY OF OKLAHOMA *ex Rel.* HARPER S. CUNNINGHAM, as Attorney General, Plaintiff,
vs.
RICHARD F. CAFFREY, as County Clerk of Oklahoma County, Oklahoma Territory, Defendant.

Peremptory Writ of Mandamus.

Territory of Oklahoma to Richard F. Caffrey, county clerk of Oklahoma county, Territory of Oklahoma, Greeting:

Whereas it manifestly appears in mandamus proceedings, duly had before the supreme court of the Territory of Oklahoma on the part of the above-named plaintiff, that you, Richard F. Caffrey, are the duly elected, qualified, and acting county clerk of the county of Oklahoma, in the Territory of Oklahoma, and that heretofore, to wit, on the 27th day of June, 1898, at a regular meeting thereof, the territorial board of equalization of said Territory duly found and ordered that a percentage, to wit, twenty-four per centum, of the assessed valuation of the property of said county, as returned for the year, 1898 by the county clerk of said county to said board of equalization, be added to said assessed valuation, and that you, as such county clerk, have been duly notified in writing of the said percentage so ordered to be added to the valuation of property in said county of Oklahoma, and that it is your duty as such county clerk to add to the total value of the property assessed to each person in said county the said percentage so ordered and extend the same

upon the tax-rolls of such county, and that you, as such clerk, have failed and refused and now fail and refuse to so add to the total value of the property assessed to each person the said
30 percentage so ordered and extend the same upon the tax-rolls of such county:

Now, therefore, having fully heard and considered the mandamus proceedings brought against you in the above behalf, you are hereby commanded, immediately after the receipt of this writ or the service of the same upon you, to perform the order and direction of said territorial board of equalization in this, to wit, that you add to the assessed valuation of the property of each person in Oklahoma county, Oklahoma Territory, for the year 1898, the percentage of twenty-four per centum of the assessed valuation of the property in said county returned for the year aforesaid, all as above set forth; and of this writ and what you have done thereunder make due return within ten days from the date of the service of the same upon you, and that you fail not at your peril to obey this order.

Witness the Hon. Jno. H. Burford, the chief justice of the supreme court, at Guthrie, this 21st day of September, 1898.

(Signed) BENJ. F. HEGLER,
[SEAL.] *Clerk Supreme Court.*

Costs in sup. ct., $6.40.

OKLAHOMA COUNTY, O. T., *Sept.* 23, 1898.

I received the original writ of which this is a true copy and executed the same, by delivering the original to Richard F. Caffrey, on the 22nd day of Sept., 1898.

J. R. BARROWS, *Sheriff*,
By C. A. RANDALL,
Under Sheriff.

Fees, .75.

Endorsed as follows: 744. Territory *ex rel.* Harper S. Cunningham, attorney general, pl'ff, *vs.* Richard F. Caffrey, as county clerk of Oklahoma county, O. T., def't. Peremptory writ allowed by the court. Jno. H. Burford, chief justice. Returned and filed Sept. 23, 1898. Benj. F. Hegler, clerk sup. ct.

31 Be it further remembered that thereafter and on the first day of October, A. D. 1898, said defendant filed in said cause his pleading entitled "Return and reply to writ of mandamus," asking the said supreme court of the Territory of Oklahoma "to set aside its decision, judgment, orders, and *writ of* peremptory writ of mandamus;" which said pleading, together with the endorsements thereon, is in the words and figures following, to wit:

32 Original.

In the Supreme Court of the Territory of Oklahoma.

TERRITORY OF OKLAHOMA *ex Rel.* Harper S. Cunningham, as Attorney General, Plaintiff, *vs.* RICHARD F. CAFFREY, as County Clerk of Oklahoma County, Oklahoma Territory, Defendant.	No. 744. Defendant's Reply to Writ of Mandamus.

1. May it please this honorable court: Defendant in the above-entitled action appears herein, by his attorney, Robert Kittle, for the purpose of making due return and reply to the apparent order of peremptory mandamus made and served upon defendant, who asks that in the consideration of the several counts as numbered in this reply the court state its findings of fact and the law governing the same severally on each seperate number. The facts on which plaintiff bases the jurisdiction of the court being stated in the writ, it proceeds with a command as follows, to wit:

2. "That you add to the assessed valuation of the property of each person in Oklahoma county, Oklahoma Territory, for the year 1898 the percentage of twenty-four — centum of the assessed valuation of the property in said county returned for the year aforesaid, all as above set forth; and of this writ and what you have done thereunder make due return within ten days from the date of the service of the same upon you, and that you fail not at your peril to obey this order."

3. Defendant is the county clerk of said county, duly elected and qualified, and has listed all the taxable property that it is his duty to list at its assessed value, regularly made, equalized, and returned to him for taxation, and all that he is by law required

33 to list.

4. He has no authority to change the assessed valuation of property taxable in said county without special order by the board of county commissioners of said county.

5. He performed this duty, by order of said board of county commissioners and in pursuance of law, before this peremptory writ of mandamus was served upon defendant, and so exhausted his authority to change valuation so assessed and listed in pursuance of law.

6. The plaintiff has not shown by motion or petition nor could he make an affidavit in support of any motion or petition stating the necessary facts to authorize the territorial board of equalization to affirm or verify facts stated therein that would give said board jurisdiction over the defendant, the tax-payers, or the subject-matter in controversy to support any valuation upon the property assessable for taxation in said county.

7. That no person or persons except the regularly authorized assessors of said county can fix a valuation upon property of the tax-payers therein.

8. For jurisdiction to perform this duty requires that the assessor should view and examine the property and the tax-payer under oath. The aggregate valuation so fixed by the assessor and county board of equalization is the only true valuation of property for the purpose of taxation.

9. The territorial board of equalization never saw the taxable property, never questioned the tax-payers as to its value in said county, which is absolutely necessary to enable them to fix a valuation on the same.

10. Said board had no power, jurisdiction, or authority to increase the valuation twenty-four per centum above the assessed valuation.

11. Plaintiff by the peremptory writ seeks the aid of this court to enforce an illegal, void, false, and fraudulent levy of twenty-four per centum of tax upon all the taxable property of the tax-payers
34 of said county, in violation of the personal and official rights of defendant and in violation of the personal and property right- of said tax-payers, which it is the official duty of the defendant to protect herein.

12. The tax-payers of Oklahoma county never had an opportunity to be heard before the territorial board on the question of raising their taxes twenty-four per centum. Without such hearing there exists no jurisdiction or power to increase a tax.

13. The increased value stated in the mandamus in this case is in violation of the organic act of this Territory, illegal, and void.

14. This order of mandamus is in violation of the uniformity of taxation provided for by the Constitution of the United States.

15. It is the duty of this court to restrain the excessive levy and listing of the twenty-four per centum named in its order of mandamus in this action. The court never had any jurisdiction to make or to enforce said writ.

16. The court never has had any jurisdiction over tax-payers or their property or the subject-matter or persons who will be most directly injured by the enforcement of the order of mandamus herein by compelling them to pay an illegal tax and casting a cloud on the title of their taxable property.

17. That by said writ money assessed at its full value, which is the standard and measure of value for taxation, is raised twenty-four per centum above the legal standard — makes the levy illegal and void.

18. The assessed value of the property in said county is $2,945,701. The amount added by said twenty-four per centum raises the value $706,968. The value is so increased to $3,652,669, making the amount of levy exceed the legal limit of taxation fixed by the organic act, and adds over $22,000 for county purposes above the necessary amount levied and listed therefor.

Plaintiff now threatens and is proceeding to enforce said writ, whereby the public business of said county will be suspended
35 and greatly injured if said proceeding be not prevented by order of the court.

Wherefore defendant prays this honorable court to set aside its decision, judgment, orders, and writ of peremptory mandamus

against him for want of jurisdiction over the parties and subject-matter in controversy in the above-entitled action on a reconsideration of the pleadings, evidence, and exceptions taken on the trial and of the facts stated in the return and foregoing reply filed herein.

The court failing so to do, defendant now takes an appeal to the Supreme Court of the United States from said decision, judgment, orders, rulings, and the final order and decision directing said writ to be issued and executed and all proceedings leading to final order.

Defendant asks this court to allow said appeal, to direct a complete transcript of the record of proceedings, evidence, files, objections, and exceptions taken on the trial of said cause to be furnished to perfect said appeal; that plaintiff be adjudged to pay to defendant his costs and damages in and about his defense herein.

(Signed) ROBERT KITTLE,
Attorney for Defendant.

36 TERRITORY OF OKLAHOMA, } ss:
Oklahoma County, }

Verification.

Richard F. Caffrey, being first sworn, on his oath says that he knows the contents of the foregoing reply, and the facts stated therein are true.

RICHARD F. CAFFREY.

Subscribed in my presence and sworn to before me this 30th day of September, 1898.

[SEAL.] JEAN H. EVEREST, *N. P.*

My com. ex. Jan. 11, 1899.

TERRITORY OF OKLAHOMA, } ss:
County of Logan, }

—, Robert Kittle, being first sworn, on my oath say that I am the attorney for defendant in the above entitled action. I had not time to have it typewritten before leaving Oklahoma city, so file this copy in lieu of the manuscript and prepared the foregoing return and reply and procured the verification thereof to the manuscript, and that this is a true copy thereof, and the facts therein are true.

(Signed) ROBERT KITTLE.

Subscribed and sworn to before me on this 30th day of September, 1898.

[SEAL.] (Signed) F. N. WEIRICK,
Deputy District Clerk.

Endorsed: No. 744. Original. In the supreme court of the Territory of Oklahoma. —— *ex rel.* Harper S. Cunningham *vs.* Richard F.

Caffrey, clerk. Return and reply of defendant. Filed October 1, 1898. Benj. F. Hegler, clerk sup. ct., by M. E. Ketsch, deputy. Ent. Robert Kittle, attorney for defendant.

37 Be it further remembered that thereafter and on the 12th day of November, A. D. 1898, said plaintiff, through its attorney general, filed in said cause its application for a rule upon said defendant to show cause before said supreme court why he should not be punished for contempt for failure to comply with the original judgment rendered therein; which said application, together with the endorsements thereon, is in the words and figures following, to wit:

38 TERRITORY OF OKLAHOMA:

In the Supreme Court.

THE TERRITORY OF OKLAHOMA *ex Rel.* HARPER S. CUNNINGham, Att'y Gen'l, Plaintiff,
vs.
RICHARD F. CAFFREY, County Clerk of Oklahoma County, Defendant.

Comes now on this the 12th day of November, 1898, Harper S. Cunningham, and shows to the court that he is the duly appointed, qualified, and acting attorney general of the Territory of Oklahoma; that Richard F. Caffrey, the county clerk of Oklahoma county, in said Territory, as defendant in the above case, has utterly failed, neglected, and refused to in any manner comply with and obey the peremptory writ of mandamus heretofore issued by this court in the above-entitled action, and this without cause or excuse on his part.

The said attorney general further shows that said neglect of said defendant will work an irreparable damage to the plaintiff in this, that that portion of the territorial tax based upon the raise of valuation made by the territorial board of equalization for the — 1898 will not be collected.

That the foregoing allegations are fully shown by the sworn return of the said defendant to said peremptory writ of mandamus now on file in this court.

Wherefore the plaintiff prays that a rule be issued upon the said defendant to show cause before the supreme court, at a time to be fixed by the chief justice, why he should not be punished as for contempt of this court, and that he be compelled by process of this court to comply with and obey said peremptory writ of man-
39 damus, and for such other and further order as may be proper in the premises.

(Signed) HARPER S. CUNNINGHAM,
Attorney General.

Endorsed: 744. Territory of Oklahoma *v.* R. F. Caffrey. Motion for rule. Filed Nov. 12, '98. Benj. F. Hegler, clerk sup. ct., by M. E. Ketsch, deputy. Harper S. Cunningham, att'y gen'l.

40 Be it further remembered that thereafter and on, to wit, the 22nd day of November, A. D. 1898, the Hon. John H. Bruford, as chief justice of said supreme court of the Territory of Oklahoma, made an order sustaining said motion of said plaintiff and requiring defendant to show cause why he should not be punished as for contempt of said court; which said order, together with the endorsements thereon, is in the words and figures following, to wit:

41 In the Supreme Court of the Territory of Oklahoma.

TERRITORY OF OKLAHOMA *ex Rel.* HARPER S. Cunningham, Attorney General, Plaintiff, *vs.* RICHARD F. CAFFREY, County Clerk of Oklahoma County, Oklahoma Territory, Defendant.	Order. No. 744.

Now, on this 22 day of November, 1898, at chambers, in the city of Guthrie, Logan county, Oklahoma Territory, before me, John H. Burford, chief justice of the supreme court of said Territory, the above-entitled cause came on to be heard upon motion of the plaintiff, Territory of Oklahoma, for rule upon defendant, Richard F. Caffrey, requiring said defendant to appear and show cause why he, the said defendant, should not be dealt with as for contempt of said court;

And whereas it appears that a peremptory writ of mandamus, enjoining upon said defendant the performance of certain lawful duties therein specified, was duly issued in said cause on the 21st day of September, 1898;

And whereas it further appears that said writ was duly served upon said defendant on the 22 day of September, 1898;

And whereas it duly appears by the aforesaid motion that the said defendant has without just excuse wholly neglected and refused to perform the duties enjoined upon said defendant by said peremptory writ of mandamus:

Now, therefore, it is considered and ordered that said motion be, and the same is hereby, sustained.

And it is further ordered that the said defendant, Richard F. Caffrey, be and appear before the said supreme court, at a session thereof to be holden at said city of Guthrie, in said county
42 and Territory, on the 2nd day of December, 1898, and at 10 o'clock a. m. of said last-mentioned day, then and there to show cause, if any, why he, the said defendant, should not be punished as for contempt of said court.

And it is further ordered, and the clerk of said court is hereby directed, to issue a rule in said cause upon said defendant to the above and foregoing effect.

(Signed) JNO. H. BURFORD,
Chief Justice.

Endorsed: No. 744. In supreme court. Territory of Oklahoma *ex rel. vs.* Richard F. Caffrey, Co. clerk. Order. Filed Nov. 22, '98. Benj. F. Hegler, clerk sup. court.

43 Be it further remembered that thereafter and on, to wit, the 23rd day of November, A. D. 1898, a rule against defendant to show cause why he should not be punished for contempt was issued in pursuance of said foregoing order; which said rule, together with the endorsements thereon, is in the words and figures following, to wit:

44 UNITED STATES OF AMERICA, }
Territory of Oklahoma, } *ss:*

To Richard F. Caffrey, county clerk of Oklahoma county, Oklahoma Ty.:

You are hereby cited to be and appear before the supreme court of the Territory of Oklahoma, at a special session thereof to be held in the city of Guthrie, on Friday, the second day of December, 1898, at 10 o'clock a. m. of said day, to show cause why you should not be punished for a contempt of said court for failing, neglecting, and refusing to obey the peremptory writ of mandamus of said court issued to you on the 21st day of September, 1898, in the cause of The Territory of Oklahoma *ex rel.* Harper S. Cunningham, attorney general, plaintiff, *vs.* Richard F. Caffrey, as county clerk of Oklahoma county, Oklahoma Territory, defendant, commanding you to add to the assessed valuation of the property of each person in Oklahoma county, Oklahoma Territory, for the year 1898 the percentage of twenty-four per centum of the assessed valuation of the property in said county returned for the year aforesaid.

Witness the Hon. Jno. H. Burford, the chief justice of said court, at Guthrie, this 23 day of November, 1898.

[SEAL.] BENJ. F. HEGLER,
Clerk Sup. Ct.

Endorsed: 744. Territory —— *ex rel.* Harper S. Cunningham *vs.* Richard F. Caffrey, county clerk of Oklahoma county. A true copy. J. R. Barrows, sheriff. C. A. Randall, under sheriff. Rec'd Nov. 28, 1898. R. F. C.

45 Be it further remembered that thereafter and on, to wit, the 2nd day of December, A. D. 1898, the defendant filed in said cause his answer and return to said rule to show cause; which said answer and return, together with the endorsements thereon, is in the words and figures following, to wit:

46 In the Supreme Court of the Territory of Oklahoma.

TERRITORY OF OKLAHOMA *ex Rel.* HARPER S. Cunningham, as Attorney General, Plaintiff, *vs.* RICHARD F. CAFFREY, as County Clerk of Oklahoma County, Oklahoma Territory, Defendant.	No. 744. Answer and Return to Rule to Show Cause.

Now comes the defendant, Richard F. Caffrey, county clerk of Oklahoma county, in the Territory of Oklahoma, and makes this his answer to rule to show cause issued on Nov. 23, 1898, and further return to the peremptory writ of mandamus issued out of said court on the 21st day of September, 1898, and which was served upon him by copy returned herewith on the 22nd day of September, 1898.

Defendant further says that on or about the 23rd day of September, 1898, after service of said writ, in the absence of J. R. Keaton, his former attorney in said cause from said county, he consulted with Robert Kittle, then an attorney-at-law at Oklahoma city, in said county, who had, in the absence of said Keaton, been employed by the board of county commissioners of said county to further represent this defendant and the interests of said county in said cause, and the said Kittle took charge of said cause for him as his attorney and advised defendant that he, said Kittle, would prepare and file for defendant a motion for a rehearing of said cause in said supreme court, together with a reply to said writ.

That thereupon said Kittle did then draft and prepare said motion for rehearing and reply to said writ, duly verified by defendant, and also a printed brief in support of the same, and on or about the 30th day of September, 1898, said Kittle went to the city of Guthrie, in said Territory, to file said reply and
47 motion for rehearing in said supreme court.

That at said time defendant was also informed by his said attorney, Robert Kittle, before he left Oklahoma city for Guthrie that until after a hearing and decision on said reply and motion for rehearing by said supreme court it would not be necessary for this defendant to do anything further concerning the said writ and action.

That he was also advised by his said attorney, Robert Kittle, that, in the opinion of said attorney, said rehearing would be allowed and granted by said court, and that the said decision of said court would be reversed and set aside at the January, 1899, term of said court.

That he was also advised by his said attorney, Robert Kittle, that in case said rehearing was not granted by said court he, the said attorney, would perfect an appeal of said cause for said defendant from the decision of said court to the Supreme Court of the United States, and that this defendant need not give himself any further

concern about said cause until the January session of the supreme court of Oklahoma Territory, at Guthrie.

That defendant was also advised by his said attorney, Robert Kittle, that no appeal could be taken by him to the Supreme Court of the United States in said cause until after a decision had been had and rendered in said cause upon defendant's said reply to said writ and upon said motion for rehearing.

That it has been at all times and still is the purpose and intention of this defendant, in case the final decision of the supreme court of Oklahoma Territory should be adverse to defendant, to appeal said cause to the Supreme Court of the United States.

That said Robert Kittle returned from Guthrie, where he had gone, as aforesaid, to file said reply and motion for rehearing, to his home, in Oklahoma city, and was, as this defendant after-
48 wards learned, very sick at the time of his said return home, and that said Kittle continued very sick and confined to his bed until his death, which occurred on or about the 10th day of November, 1898, and this defendant saw said Kittle only once after his return from Guthrie on said occasion, and the said Kittle was at that time very ill, but he assured this affiant that everything connected with said case was all right, and that there was nothing further to be done relative thereto until the further decision of this court.

Wherefore this affiant prays that he be granted a rehearing in said cause upon the grounds and for the reasons set forth in said application therefor, prepared and filed by the said Robert Kittle, or in the event that this court determines that such rehearing should not be granted, then affiant asks that he be granted an appeal to the Supreme Court of the United States, and that the amount of a supersedeas bond staying the execution of judgment herein be fixed by this court.

(Signed) J. R. KEATON AND
DOUGLAS & DOUGLAS,
Attorneys for Defendant.

TERRITORY OF OKLAHOMA, } ss:
County of Oklahoma, }

Richard F. Caffrey, of lawful age, being first duly sworn, deposes and says that he is the defendant above named; that he has read the foregoing return and affidavit and knows that the matters and things therein set forth are true and correct.

(Signed) RICHARD F. CAFFREY.

Subscribed and sworn to before me this 1st day of December, 1898.

[SEAL.] (Signed) B. D. SHEAR,
District Clerk.

Endorsed: No. 744. Territory *ex rel.* att'y gen'l *vs.* Richard F. Caffrey, Co. att'y. Application for rehearing and showing why — should not be punished for contempt. Filed Dec. 2, 1898. Benj. F. Hegler, clerk sup. ct.

49 Be it further remembered that thereafter and on, to wit, the said 2nd day of December, A. D. 1898, the said supreme court of the Territory of Oklahoma made and passed an order overruling and denying the return of defendant to the peremptory writ of mandamus and refusing to grant a rehearing in said cause; which said order is in the words and figures following, to wit:

50 In the Supreme Court.

TERRITORY OF OKLAHOMA *ex Rel.* HARPER S. CUNNINGHAM, Attorney General, Plaintiff,
vs.
RICHARD F. CAFFREY, as County Clerk of Oklahoma County, Defendant.

Now, on this second day of December, 1898, the court overrules and denies the answer of defendant to the peremptory writ of mandamus heretofore issued and refuses to grant a rehearing; to which orders the defendant, by counsel, excepts and prays an appeal to the Supreme Court of the United States, which is allowed, and the chief justice is directed to sign all writs, orders, and citations.

JNO. H. BURFORD,
Chief Justice.

51 Be it further remembered that thereafter and on the same date the said supreme court made and passed a further order, holding that defendant's answer to said rule to show cause was insufficient and adjudging him in contempt of said court, and committing him to the jail of Oklahoma county until he should comply with the judgment of said supreme court, dated September 3rd, 1898; which said order is in the words and figures following, to wit:

52 To the sheriff of Oklahoma county:

UNITED STATES OF AMERICA, *Territory of Oklahoma*, } *ss*:

In the Supreme Court.

TERRITORY OF OKLAHOMA on the Relation of HARPER S. CUNNINGHAM, Attorney General, Plaintiff,
vs.
RICHARD F. CAFFREY, County Clerk of Oklahoma County, O. T., Def't.

And now, on the 2d day of December, A. D. 1898, this cause comes on to be heard upon the rule heretofore issued citing the defendant, Richard F. Caffrey, to appear and show cause, if any he have, why he should not be *be* adjudged in contempt of court for failure to comply with the peremptory writ of mandamus heretofore granted and issued in said cause; and said cause coming on to be heard upon the showing made by the attorney general and the

answer of the defendant to said rule, and the court, being fully advised, finds that the said Richard F. Caffrey has not complied with the commands of said peremptory writ of mandamus or performed the duties therein required of him, and that he has shown no legal excuse for said failure, it is now—

Ordered and adjudged by the court that the said Richard F. Caffrey is in contempt of this court; and it is further ordered
53 that he be imprisoned in the county jail of Oklahoma county until such time as he shall in all things perform the duties and do the things required of him, as commanded in said peremptory writ of mandamus, and the sheriff of said Oklahoma county is hereby commanded to immediately arrest the said Richard F. Caffrey and commit him to said jail.

It is further ordered that if the said Richard F. Caffrey shall file with the sheriff of said Oklahoma county his affidavit to the effect that he is ready and willing to at once begin the work of extending said taxes upon the tax-rolls of said county, as commanded in said writ, and carry the same on to completion as rapidly as the same can be done, and that he will promptly and energetically perform all the requirements of said writ, then the said sheriff shall release him from imprisonment, in order to enable him to perform said duties, and the said commitment shall be suspended until the further order of this court.

JNO. H. BURFORD,
Chief Justice.

54 Be it further remembered that thereafter and on the 5th day of December, A. D. 1898, defendant filed in said cause his petition for writ of error, with assignments attached, and an affidavit showing the amount in controversy to exceed the sum of five thousand dollars, exclusive of costs; which said petition, together with the endorsements thereon, is in the words and figures following, to wit:

55 In the Supreme Court of the Territory of Oklahoma.

TERRITORY OF OKLAHOMA *ex Rel.* HARPER S. Cunningham, as Attorney General, Plaintiff, *vs.* RICHARD F. CAFFREY, as County Clerk of Oklahoma County, Oklahoma Territory, Defendant.	Petition for Writ of Error.

Comes now the defendant, Richard F. Caffrey, and says that on the 3rd day of September, 1898, this court entered judgment herein in favor of the plaintiff and against this defendant, sustaining plaintiff's demurrer to the answer and return of this defendant to the alternative writ of mandamus, and ordering and allowing a peremptory writ of mandamus against him and in favor of said plaintiff; and on the 2nd day of December, 1898, this court entered a further judgment overruling the reply and return of said defendant to the said peremptory writ of mandamus and refusing to grant a rehear-

ing in said cause and affirming the former decision of September 3rd, 1898, herein, in which said orders, judgments, and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this defendant.

All of which will more in detail appear from the assignment of errors which is filed with this petition.

This defendant further, in his behalf, shows that the amount in controversy in this cause, exclusive of costs, exceeds the sum or amount of five thousand ($5,000.00) dollars, and is of about the sum or amount of twenty-eight thousand seven hundred and fifty-one dollars and eighty-seven cents ($28,751.87), as more fully appears by the affidavit of said defendant, which is hereto attached.

56 Wherefore this defendant prays that a writ of error may issue in this behalf to the Supreme Court of the United States for the correction of the errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the said Supreme Court of the United States.

(Signed) JAMES R. KEATON,
Attorney for Defendant, Richard F. Caffrey.

57 In the Supreme Court of the Territory of Oklahoma.

TERRITORY OF OKLAHOMA *ex Rel.* HARPER S. Cunningham, as Attorney General, Plaintiff,
vs.
RICHARD F. CAFFREY, as County Clerk of Oklahoma County, Oklahoma Territory, Defendant.
} Affidavit Showing the Amount in Controversy.

TERRITORY OF OKLAHOMA, *County of Oklahoma,* } *ss:*

James R. Keaton, of lawful age, being first duly sworn according to law, on his oath says that he is attorney for the defendant, Richard F. Caffrey, in the above-entitled action; that he is familiar with the controversy involved in this cause and knows the amount at issue therein and involved therein and of controversy therein, and knows the amount in controversy in said cause, exclusive of costs, to exceed the sum of five thousand ($5,000.00) dollars, and to be about the sum of twenty-eight thousand seven hundred and fifty-one dollars and eighty-seven cents ($28,751.87).

(Signed) JAMES R. KEATON.

Subscribed and sworn to before me this 5th day of December, 1898.

(Signed) BENJ. F. HEGLER,
[SEAL.] *Clerk Supreme Court, Oklahoma Territory.*

58 In the Supreme Court of the Territory of Oklahoma.

TERRITORY OF OKLAHOMA *ex Rel.* HARPER S. CUNNINGHAM, as Attorney General, Plaintiff,
vs.
RICHARD F. CAFFREY, as County Clerk of Oklahoma County, Oklahoma Territory, Defendant.
} Assignment of Errors.

The defendant in this action, Richard F. Caffrey, in connection with his petition for a writ of error and as a part thereof makes the following assignment of errors which he avers occurred upon the trial of this case, to wit:

First. The court erred in sustaining the demurrer to (or motion to quash) the return of this defendant to the alternative writ of mandamus issued in this cause.

Second. The court erred in not carrying said demurrer back and sustaining same to said alternative writ of mandamus.

Third. The court erred in not carrying said demurrer back and sustaining same to the motion and application filed in said cause asking for the issuance of the alternative writ of mandamus.

Fourth. The court erred in rendering judgment upon the pleadings in favor of plaintiff and against this defendant after having sustained said demurrer to defendant's said return to the alterna- writ of mandamus.

Fifth. The court erred in allowing and ordering a peremptory writ of mandamus in favor of said plaintiff and against this defendant.

Sixth. The court erred in overruling and denying defendant's return and reply filed herein on October first, 1898, to the
59 peremptory writ of mandamus issued out of this court on September 21st, 1898, and in refusing to set aside its decisions, judgment, and order granting said peremptory writ of mandamus.

Wherefore the said Richard F. Caffrey prays that the said orders and judgments aforesaid may be reversed, annulled, and held for naught, and that he may be restored to all goods which he has lost by reason of the said orders and judgments.

(Signed) JAMES R. KEATON,
Attorney for Defendant.

Endorsed: No. 744. Territory of Oklahoma *ex rel.* Cunningham *v.* R. F. Caffrey, Co. clerk. Petition for writ of error and assignment of errors. Filed this 5th day of December, 1898. Benj. F. Hegler, clerk sup. ct. J. R. Keaton, att'y for def't.

60 Be it further remembered that thereafter and on the same date said defendant filed in said cause his petition on appeal, with assignments of error attached, and an affidavit showing the amount in controversy, exclusive of costs, to exceed the sum of five thousand dollars; which said petition on appeal and allowance

thereof, asisgnments of error, and affidavits, together with the endorsements thereon, are in the words and figures following, to wit:

61 In the Supreme Court of the Territory of Oklahoma.

TERRITORY OF OKLAHOMA *ex Rel.* HARPER S. CUNNINGHAM, as Attorney General, Plaintiff, Respondent,
vs.
RICHARD F. CAFFREY, as County Clerk of Oklahoma County, Oklahoma Territory, Defendant, Appellant.
} Appeal and Allowance.

The above-named defendant, Richard F. Caffrey, conceiving himself aggrieved by the order and judgment entered on September 3rd, 1898, in the above-entitled cause and proceeding, and also by the denial and overruling of his reply and return to the peremptory writ of mandamus and the affirmance of said former judgment and order on the 2nd day of December, 1898, doth hereby appeal from said orders and judgments of September 3rd, 1898, and December 2nd, 1898, to the Supreme Court of the United States for the reasons specified in the assignment of errors filed herewith and hereto attached, and he prays that this his appeal may be allowed, and that a transcript of the records and proceedings and papers upon which said orders and judgments were made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 5th day of December, 1898.

(Signed) JAMES R. KEATON,
Attorney for Appellant, Richard F. Caffrey.

GUTHRIE, OKLAHOMA, *December 5th*, 1898.

Now, to wit, on December fifth, 1898, it is ordered that the appeal be allowed as prayed for.

(Signed) JNO. H. BURFORD,
Chief Justice Supreme Court Oklahoma.

62 In the Supreme Court of the Territory of Oklahoma.

TERRITORY OF OKLAHOMA *ex Rel.* Harper S. Cunningham, as Attorney General, Plaintiff,
vs.
RICHARD F. CAFFREY, as County Clerk of Oklahoma County, Oklahoma Territory, Defendant.
} Affidavit Showing Amount in Controversy.

TERRITORY OF OKLAHOMA, } *ss:*
County of Oklahoma, }

James R. Keaton, of lawful age, being first duly sworn according to law, on his oath says that he is attorney for the defendant, Richard F. Caffrey, in the above-entitled action; that he is familiar with

the controversy involved in this cause and knows the amount at issue therein and involved therein and of controversy therein, and knows the amount in controversy in said cause, exclusive of costs, to exceed the sum of five thousand ($5,000.00) dollars and to be about the sum of twenty-eight thousand seven hundred and fifty-one dollars and eighty-seven cents ($28,751.87).

JAMES R. KEATON.

Subscribed and sworn to before me this 5th day of December, 1898.

BENJ. F. HEGLER,
[SEAL.] *Clerk Supreme Court, Oklahoma Territory.*

63 In the Supreme Court of the Territory of Oklahoma.

TERRITORY OF OKLAHOMA *ex Rel.* HARPER S. Cunningham, as Attorney General, Plaintiff,
vs.
RICHARD F. CAFFREY, as County Clerk of Oklahoma County, Oklahoma Territory, Defendant.
} Assignment of Errors on Appeal.

The defendant in this action, Richard F. Caffrey, in connection with his appeal and as a part thereof, makes the following assignment of errors, which he avers occurred upon the trial of this case, to wit:

First. The court erred in sustaining the demurrer to (or motion to quash) the return of this defendant to the alternative writ of mandamus issued in this case.

Second. The court erred in not carrying said demurrer back and sustaining same to said alternative writ of mandamus.

Third. The court erred in not carrying said demurrer back and sustaining same to the motion and application filed in said cause asking for the issuance of the alternative writ of mandamus.

Fourth. The court erred in rendering judgment upon the pleadings in favor of plaintiff and against this defendant after having sustained said demurrer to defendant's said return to the alternative writ of mandamus.

Fifth. The court erred in allowing and ordering a peremptory writ of mandamus in favor of said plaintiff and against this defendant.

Sixth. The court erred in overruling and denying defendant's return and reply filed herein on October first, 1898, to the peremptory writ of mandamus issued out of this court on September
64 21st, 1898, and in refusing to set aside its decision, judgment, and order granting said peremptory writ of mandamus.

Wherefore the said Richard F. Caffrey prays that the said orders, judgments, and decrees herein complained of be reversed.

(Signed) JAMES R. KEATON,
Attorney for Defendant.

Endorsed: No. 744. Territory of Oklahoma *ex rel.* Cunningham *v.* R. F. Caffrey, Co. clerk. Petition on appeal, allowance, and assignment of errors. Filed this 5th day of December, 1898. Benj. F. Hegler, clerk sup. ct. J. R. Keaton, att'y for def't.

65 Be it further remembered that thereafter and on the same date the Hon. John H. Burford, chief justice of said court, made an order allowing the writ of error prayed for by defendant in his said petition; which said order is in the words and figures following, to wit:

66 In the Supreme Court of Oklahoma.

TERRITORY OF OKLAHOMA *ex Rel.* HARPER S. Cunningham, as Plaintiff, *versus* RICHARD F. CAFFREY, as County Clerk of Oklahoma County, Oklahoma Territory, as Defendant.	Allowance of Writ of Error and Denial of Supersedeas.

This fifth day of December, 1898, came the defendant, by his attorney, and filed herein and presented to me as chief justice of the supreme court his petition praying for the allowance of a writ of error intended to be urged by him, and praying also that a transcript of the record of the proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other proceedings may be had as may be proper in the premises.

On consideration whereof I, Jno. H. Burford, chief justice, do hereby allow the writ of error prayed for, and application for supersedeas is denied.

Witness my hand this fifth day of December, 1898.

(Signed) JNO. H. BURFORD,
Chief Justice Supreme Court Oklahoma.

67 Be it further remembered that thereafter and on the same date a writ of error was issued and an appeal allowed in said cause. (See writ of error preceding this record and allowance of appeal, Rec., p. 61.)

Be it further remembered that thereafter and on the same date the following citations on said writ of error and appeal were issued by the Hon. John H. Burford, as chief justice of said court, to wit: (See pages 68 and 69.)

And afterwards and on the 28th day of December, A. D. 1898, the acceptance of service of plaintiff, as endorsed on said citations, was made.

68 THE UNITED STATES OF AMERICA, *ss:*

To the Territory of Oklahoma *ex rel.* Harper S. Cunningham, attorney general of said Territory, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the city of Washington, on the 3rd day of January next, pursuant to a writ of error filed in the clerk's office of the supreme court of the Territory of Oklahoma, wherein The Territory of Oklahoma on the relation of Harper S. Cunningham, as attorney general, is plaintiff and Richard F. Caffrey, as county clerk Oklahoma county, said Territory, is defendant, to show cause, if any there be, why the judgment rendered against the said defendant, as in the said writ of error mentioned, should not be corrected and speedy justice be done to the parties in that behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this fifth day of December, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States of America the one hundred and twenty-third.

JNO. H. BURFORD,
Chief Justice Supreme Court Oklahoma.

[Seal Supreme Court, Territory of Oklahoma.]

Attest: BENJ. F. HEGLER,
Clerk Supreme Court, Oklahoma Territory.

TERRITORY OF OKLAHOMA, }
County of Logan. }

I hereby, this 28th day of December, A. D. 1898, accept due personal service of this citation on behalf of The Territory of Oklahoma, defendant in error.

HARPER S. CUNNINGHAM,
Attorney General of Oklahoma Territory.

69 THE UNITED STATES OF AMERICA, *ss:*

To the Territory of Oklahoma *ex rel.* Harper S. Cunningham, attorney general, Greeting:

Whereas Richard F. Caffrey, county clerk of Oklahoma county, Oklahoma Territory, has lately appealed to the Supreme Court of the United States from an order and decree lately rendered in the supreme court of the Territory of Oklahoma, made in favor of this Territory of Oklahoma on the relation of you, said Harper S. Cunningham, attorney general of said Territory, and has filed the security required by law, you are therefore hereby cited to appear before the Supreme Court of the United States, at the city of Washington, on the 3rd day of January next, to do and receive what may appertain to justice to be done in the premises.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court United States, this fifth day of December, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States of America the one hundred and twenty-third.

JNO. H. BURFORD,
Chief Justice Supreme Court of Oklahoma.

[Seal Supreme Court, Territory of Oklahoma.]

Attest: BENJ. F. HEGLER,
Clerk Supreme Court, Oklahoma Territory.

TERRITORY OF OKLAHOMA, }
County of Logan. }

I hereby accept due personal service of this citation on this 28th day of December, A. D. 1898, on behalf of The Territory of Oklahoma, appellee.

HARPER S. CUNNINGHAM,
Attorney General of Oklahoma Territory.

70 Be it further remembered that thereafter and on the same date true and complete copies of said appeal and allowance and said writ of error were lodged in the office of the clerk of said supreme court of the Territory of Oklahoma for the adverse party, as shown by the certificate of said clerk of said date; which said certificate is in the words and figures following, to wit:

71 In the Supreme Court of the Territory of Oklahoma.

TERRITORY OF OKLAHOMA *ex Rel.* Harper S. Cunningham, *at At—*, *vs.* RICHARD F. CAFFREY, as County Clerk of Oklahoma County, Oklahoma Territory, Defendant.	Certificate Showing that Appeal and Writ of Error Have Been Deposited in Office of Clerk.

I, Benjamin F. Hegler, clerk of the supreme court of the Territory of Oklahoma, do hereby certify that on the 5th day of December, 1898, the defendant in the said above-entitled cause lodged in my office a true copy of the appeal allowed and the writ of error granted and issued in said cause for the adverse party, to wit, the plaintiff.

Witness my hand and the seal of said court, at Guthrie, this 5th day of December, 1898.

(Signed) BENJ. F. HEGLER,
[SEAL.] *Clerk Sup. Ct.*

72 Be it further remembered that thereafter and on the 8th day of December, A. D. 1898, a second and written application for an order permitting defendant to give a good and sufficient

bond to act as a supersedeas in said cause was filed therein and presented to the Hon. John H. Burford, as chief justice of said court; which said application, together with the endorsements thereon, is in the words and figures following, to wit:

73 In the Supreme Court of the Territory of Oklahoma.

TERRITORY OF OKLAHOMA *ex Rel.* Harper S. Cunningham, as Attorney General, Plaintiff, *vs.* RICHARD F. CAFFREY, as County Clerk of Oklahoma County, Oklahoma Territory, Defendant.	Application for Order Allowing Defendant to Give Supersedeas Bond.

Comes now the defendant, Richard F. Caffrey, by his attorney, and asks the Hon. John H. Burford, chief justice of the said supreme court of the Territory of Oklahoma, to grant him the right to give bond in said cause superseding and staying the execution of the judgment rendered therein, and also asks that the amount of said bond be now fixed by the said chief justice, and shows in support of this application that on the 5th day of December, 1898, this defendant filed in said court his petition for a writ of error, with assignment of errors attached, and also his petition on appeal, with assignment of errors attached, and that on said date said petitions were presented to the Hon. John H. Burford, as chief justice of said court, and thereupon the said chief justice made an order granting said writ of error, and said writ of error was thereupon and on the same date allowed by said chief justice and issued and made returnable on the 3rd day of January next. On said date said chief justice also allowed the appeal prayed for; that thereafter and on the said 5th day of December, 1898, this defendant caused to be lodged in the office of the clerk of this court a true and correct copy of said writ of error and of said appeal for the adverse party, to wit, the plaintiff herein, and that said copies of said writ of error and appeal are now so deposited with said clerk for such purpose; that this defendant further shows to said chief justice that the judgment in this case is one which may properly be superseded upon the execution of a good and sufficient bond, which he now hereby
74 offers to execute and furnish in such sum as you, the said chief justice, may deem reasonable and proper.

JAMES R. KEATON,
Attorney for Defendant.

Endorsed: No. —. Territory of Oklahoma *ex rel.* Harper S. Cunningham *vs.* Richard F. Caffrey, county clerk. Application for order allowing defendant to give supersedeas bond. Filed Dec. 8, '98. Benj. F. Hegler, clerk supreme court. J. R. Keaton, att'y for def't.

75 Be it further remembered that thereafter and on the same date the said chief justice made an order overruling and

denying said application; which said order is in the words and figures following, to wit:

76 In the Supreme Court of the Territory of Oklahoma.

TERRITORY OF OKLAHOMA *ex Rel.* HARPER S. CUNNINGHAM, as Attorney General, Plaintiff,
vs.
RICHARD F. CAFFREY, as County Clerk of Oklahoma County, Oklahoma Territory, Defendant. } Order.

Now, on this eighth day of December, 1898, the defendant, by his counsel, applies for a supersedeas and stay of proceedings in the above-entitled cause, and the same coming on for hearing before me in chambers, and it appearing that the appeal in said cause and application for writ of error was not taken or requested until after the defendant had been committed to the county jail of Oklahoma county by the judgment of the supreme court adjudging him in contempt for failure to obey the peremptory writ of mandamus in said cause, and believing that there can be no serious controversy as to the questions of law involved in said cause, said application for a supersedeas is hereby overruled and denied; to all of which defendant excepted and excepts.

Done in chambers, at the city of Guthrie, this December 8th, 1898.

(Signed) JNO. H. BURFORD,
Chief Justice.

77 UNITED STATES OF AMERICA, *Territory of Oklahoma*, } *ss:*

I, Benjamin F. Hegler, clerk of the supreme court of the Territory of Oklahoma, do hereby certify that the above and foregoing is a full, true, and complete transcript of the records in a cause therein entitled Territory of Oklahoma on the relation of Harper S. Cunningham, as attorney general, plaintiff, against Richard F. Caffrey, as county clerk of Oklahoma county, Oklahoma Territory, defendant, as the same appears of record and on file in my office.

Seal Supreme Court, Territory of Oklahoma.

In testimony whereof I have hereunto subscribed my name and caused the seal of said court to be affixed, at my office, in the city of Guthrie, on this the 29th day of December, A. D. 1898, and of the Independence of the United States of America the one hundred and twenty-third.

BENJ. F. HEGLER,
Clerk of the Supreme Court of the Territory of Oklahoma.

Endorsed on cover: File No. 17,246. Oklahoma Territory supreme court. Term No., 661. Richard F. Caffrey, as county clerk of Oklahoma county, plaintiff in error & appellant, *vs.* The Territory of Oklahoma on the relation of Harper S. Cunningham, attorney general. Filed January 4th, 1899.